

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1453

AN ACT to amend the Indiana Code concerning business and other associations.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 23-7-8-1 IS AMENDED TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2005]: Sec. 1. As used in this chapter:

"Bona fide employee" means a person who is a regular, nontemporary employee of a charitable organization under the direct and exclusive control of the organization. The term does not include a person that:

- (1) solicits contributions for a charitable organization under the direction, supervision, instruction, or employ of a professional solicitor;**
- (2) is engaged or employed as a professional solicitor by any other person; or**
- (3) solicits contributions for more than one (1) charitable organization.**

"Charitable organization" means any organization described in Section 501 of the federal Internal Revenue Code.

"Contribution" means a promise or pledge of money, a payment, or any other rendition of property or service. It does not include the payment of membership dues, fines or assessments, or payments for property sold or services rendered by the charitable organization, if not sold or rendered in connection with a solicitation, and does not include a charitable organization that resells used clothing or household items.

"Division" means the consumer protection division, office of the



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attorney general.

"Person" includes any individual, organization, trust foundation, association, partnership, limited liability company, or corporation.

"Professional fundraiser consultant" means any person who is hired for a fee to plan, manage, advise, or act as a consultant in connection with soliciting contributions for, or on behalf of, a charitable organization, but who does not actually solicit contributions as a part of the person's services or employ, procure, or engage a compensated person to solicit contributions. The term does not include a charitable organization, or a bona fide officer, employee, member, or volunteer of a charitable organization, that solicits on its own behalf.

"Professional solicitor" means a person who, for a financial consideration, solicits contributions for, or on behalf of, a charitable organization, either personally or through agents or employees specifically employed for that purpose, **including agents or employees specifically employed by or for a charitable organization who solicit contributions under the direction, supervision, or instruction of a professional solicitor.** The term does not include a charitable organization, or an officer, ~~an~~ **a bona fide** employee, ~~a member~~, or a volunteer of a charitable organization, that solicits on its own behalf.

"Solicit" means:

- (1) to request, other than as described in subdivision (2), directly or indirectly, financial assistance in any form on the representation that the financial assistance will be used for a charitable purpose; or
- (2) to sell, offer, or attempt to sell any advertisement, advertising space, membership, or tangible item:
 - (A) in connection with which any appeal is made for any charitable organization or purpose;
 - (B) where the name of any charitable organization is used or referred to in any appeal made for any charitable organization as an inducement or reason for making a sale described in this subdivision; or
 - (C) when or where in connection with a sale described in this subdivision any statement is made that the whole or any part of the proceeds from the sale will be used for any charitable purpose or benefit any charitable organization.

A solicitation shall be considered to have taken place whether or not the person making the solicitation receives any contribution.

SECTION 2. IC 23-7-8-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) A person may not act as a professional fundraiser consultant or professional solicitor for a

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charitable organization unless the person has first registered with the division. A person who applies for registration shall disclose the following information while under oath:

- (1) The names and addresses of all officers, employees, and agents who are actively involved in fundraising or related activities.
- (2) The names and addresses of all persons who own a ten percent (10%) or more interest in the registrant.
- (3) A description of any other business related to fundraising conducted by the registrant or any person who owns ten percent (10%) or more interest.
- (4) The name or names under which it intends to solicit contributions.
- (5) Whether the organization has ever had its registration denied, suspended, revoked, or enjoined by any court or other governmental authority.

(b) A registrant shall notify the division in writing within one hundred eighty (180) days of any change in the information contained in the registration. However, if requested by the division, the solicitor has fifteen (15) days to notify the division of any change in the information.

(c) Before acting as a professional fundraiser consultant for a particular charitable organization, the consultant must enter into a written contract with the organization and file this contract with the division. The contract must identify the services that the professional fundraiser consultant is to provide, including whether the professional fundraiser consultant will at any time have custody of contributions.

(d) Before a professional solicitor engages in a solicitation, the professional solicitor must have a contract which is filed with the division. This contract must specify the percentage of gross contributions which the charitable organization will receive or the terms upon which a determination can be made as to the amount of the gross revenue from the solicitation campaign that the charitable organization will receive. The amount of gross revenue from the solicitation campaign that the charitable organization will receive must be expressed as a fixed percentage of the gross revenue or expressed as a reasonable estimate of the percentage of the gross revenue. If a reasonable estimate is used, the contract must clearly disclose the assumptions or a formula upon which the estimate is based. If a fixed percentage is used, the percentage must exclude any amount that the charitable organization is to pay as expenses of the solicitation campaign, including the cost of the merchandise or services sold. If

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requested by the charitable organization, the person who solicits must at the conclusion of a charitable appeal provide to the charitable organization ~~the names and addresses of all contributors; the amount of each contribution; and~~ a final accounting of all expenditures. ~~Such information~~ **The final accounting** may not be used in violation of any trade secret laws. The contract must disclose the average percentage of gross contributions collected on behalf of charitable organizations that the charitable organizations received from the professional solicitor for the three (3) years preceding the year in which the contract is formed. **The contract also must specify that, at least every ninety (90) days, the professional solicitor shall provide the charitable organization with access to and use of information concerning contributors, including the name, address, and telephone number of each contributor and the date and amount of each contribution. A professional solicitor may not restrict a charitable organization's use of contributor information.**

(e) Before beginning a solicitation campaign, a professional solicitor must file a solicitation notice with the division. The notice must include the following:

- (1) A copy of the contract described in subsection (d).
- (2) The projected dates when soliciting will begin and end.
- (3) The location and telephone number from where solicitation will be conducted.
- (4) The name and residence address of each person responsible for directing and supervising the conduct of the campaign. However, the division shall not divulge the residence address unless ordered to do so by a court of competent jurisdiction, or in furtherance of the prosecution of a violation under this chapter.
- (5) If the solicitation is one described under section 7(a)(3) of this chapter, the solicitation notice must include a copy of the required written authorization.

(f) Not later than ninety (90) days after a solicitation campaign has ended and not later than ninety (90) days after the anniversary of the commencement of a solicitation campaign lasting more than one (1) year, a professional solicitor shall submit the following information concerning the campaign to the division:

- (1) The total gross amount of money raised by the professional solicitor and the charitable organization from donors.
- (2) The total amount of money paid to or retained by the professional solicitor.
- (3) The total amount of money, not including the amount identified under subdivision (2), paid by the charitable

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organization as expenses as part of the solicitation campaign.

(4) The total amount of money paid to or retained by the charitable organization after the amounts identified under subdivisions (2) and (3) are deducted.

The division may deny or revoke the registration of a professional solicitor who fails to comply with this subsection.

(g) The charitable organization on whose behalf the professional solicitor is acting must certify that the information filed under subsections (e) and (f) is true and complete to the best of its knowledge.

(h) At the beginning of each solicitation call, a professional fundraiser consultant and a professional solicitor must state all of the following:

- (1) The name of the company for whom the professional fundraiser consultant or professional solicitor is calling.
- (2) The name of the professional fundraiser consultant or professional solicitor.
- (3) The phone number and address of the location from which the professional fundraiser consultant or professional solicitor is making the telephone call.
- (4) The percentage of the charitable contribution that will be expended for charitable purposes after administrative costs and the costs of making the solicitation have been satisfied.

(i) At least every ninety (90) days, a professional solicitor shall provide each charitable organization on whose behalf the professional solicitor is acting with access to and use of information concerning contributors, including the name, address, and telephone number of each contributor and the date and amount of each contribution. A professional solicitor may not restrict a charitable organization's use of information provided under this subsection.

SECTION 3. IC 23-17-2-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. (a) "Corporation" means a public benefit, mutual benefit, or religious corporation incorporated under or subject to this article.

(b) The term does not include a foreign corporation.

(c) For purposes of IC 23-17-24, the term does not include a homeowners association (as defined in IC 34-6-2-58).

SECTION 4. IC 23-17-24-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 1.5. (a) This section applies to the following:**

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(1) Notwithstanding IC 23-17-1-1, all corporations organized under Indiana law for a purpose for which a corporation may be organized under this article, regardless of the date of incorporation.

(2) A foreign corporation that desires to transact business in Indiana.

(b) In addition to a dissolution under section 1 of this chapter, the attorney general may petition a court to issue one (1) or more of the following remedies:

(1) Injunctive relief.

(2) Appointment of temporary or permanent receivers.

(3) Permanent removal of trustees, corporate officers, or directors who have breached the fiduciary duty.

(4) Appointment of permanent court approved replacement trustees, corporate officers or directors, and members.

(c) The attorney general may seek a remedy against any or all of the following:

(1) If the attorney general establishes a condition enumerated in section 1(a)(1) of this chapter, a corporation.

(2) For a violation of the officer's duties under IC 23-17-14-2, a corporate officer.

(3) For a violation of IC 23-17-13, a corporate director.

SECTION 5. IC 23-17-24-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) Venue for a proceeding brought by the attorney general to dissolve against a corporation or its officers or directors lies in Marion County. Venue for a proceeding brought by any other party named under section 1 of this chapter lies in the county where:

(1) a corporation's principal office is or was last located; or

(2) if the principal office is not located in Indiana, the corporation's registered office is or was last located.

(b) A director or a member does not have to be made a party to a proceeding to dissolve a corporation unless relief is sought against a director or a member individually.

(c) A court in a proceeding brought to dissolve a corporation may do the following:

(1) Issue injunctions.

(2) Appoint a receiver or custodian pendente lite with all powers and duties the court directs.

(3) Take other action required to preserve the corporate assets wherever located.

(4) Carry on the activities of the corporation until a full hearing

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can be held.

(d) A person other than the attorney general who brings an involuntary dissolution proceeding for a public benefit or religious corporation shall give written notice without delay of the proceeding to the attorney general who may intervene.

SECTION 6. IC 23-17-24-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) A court in a judicial proceeding brought **by the attorney general or by any other party named under section 1 of this chapter** to dissolve a public benefit or mutual benefit corporation may appoint at least one (1):

- (1) receiver to wind up and liquidate; or
- (2) custodian to manage;

the affairs of the corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of the corporation's property wherever located.

(b) The court may appoint an individual or a domestic or foreign business or nonprofit corporation authorized to transact business in Indiana as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(c) The court shall describe the powers and duties of the receiver or custodian in the appointing order, which may be amended from time to time, including the following:

- (1) The receiver may do the following:
 - (A) Dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court. However, the corporation is subject to a trust, an endowment, and other restrictions that would be applicable to the corporation.
 - (B) Sue and defend in the receiver's or custodian's name as receiver or custodian of the corporation in all Indiana courts.
- (2) The custodian may exercise all of the powers of the corporation, through or in place of the corporation's board of directors or officers, to the extent necessary to manage the affairs of the corporation in the best interests of the corporation's members and creditors or to carry out the corporation's lawful purposes.

(d) The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver if doing so is in the best interests of the corporation and the

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corporation's members and creditors.

(e) The court may, during the receivership or custodianship, order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and the receiver's or custodian's counsel from the assets of the corporation or proceeds from the sale of the assets.

SECTION 7. IC 27-16 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

ARTICLE 16. PROFESSIONAL EMPLOYER ORGANIZATIONS

Chapter 1. Applicability

Sec. 1. This article applies after December 31, 2005.

Chapter 2. Definitions

Sec. 1. The definitions in this chapter apply throughout this article.

Sec. 2. (a) "Administrative fee" means the fee charged to a client by a professional employer organization for professional employer services.

(b) The term does not include any amount charged to a client by a professional employer organization for wages and salaries, benefits, worker's compensation, payroll taxes, withholding, or other assessments paid by a professional employer organization to or on behalf of a covered employee.

Sec. 3. "Client" means a person that enters into a professional employer agreement with a professional employer organization.

Sec. 4. "Co-employed" means that an individual is contemporaneously employed by both a client and a professional employer organization.

Sec. 5. "Co-employer" refers to a client or a professional employer organization that has entered into a professional employer agreement and has a relationship with a co-employed individual.

Sec. 6. "Co-employment relationship" means a relationship:

(1) between a:

(A) client and a professional employer organization; or

(B) co-employer and a covered employee; and

(2) that results from the client and the professional employer organization entering into a professional employer agreement.

Sec. 7. "Commissioner" refers to the insurance commissioner appointed under IC 27-1-1-2.

Sec. 8. (a) "Covered employee" means an individual who is

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co-employed.

(b) The term includes an individual who is an officer, a director, a shareholder, a partner, or a manager of a client to the extent the professional employer organization and the client expressly agree that the individual:

- (1) is described in subsection (a); and
 - (2) acts as an operational manager or performs day to day operational services for the client;
- as reflected in the professional employer agreement.

Sec. 9. "Department" refers to the department of insurance created by IC 27-1-1-1.

Sec. 10. "PEO group" means two (2) or more professional employer organizations that are majority owned or commonly controlled by the same entity, parent, or controlling person.

Sec. 11. "Person" means an individual, a partnership, a corporation, a limited liability company, an association, or another legally recognized entity.

Sec. 12. "Professional employer agreement" means a written contract between a person and a professional employer organization:

- (1) under which all or a majority of the person's employees become covered employees;
- (2) that provides for the allocation of employer rights and obligations between the person and the professional employer organization with respect to the covered employees; and
- (3) that specifies the professional employer services that will be provided.

Sec. 13. (a) "Professional employer organization" or "PEO" means a person engaged in the business of providing professional employer services.

(b) The term does not include the following:

- (1) An arrangement through which a person:
 - (A) whose principal business activity is an activity other than entering into professional employer agreements; and
 - (B) that does not hold the person out as a professional employer organization;

shares employees with a commonly owned company within the meaning of Section 414(b) and 414(c) of the Internal Revenue Code of 1986, as amended.

- (2) An independent contractor arrangement through which a person:

- (A) assumes responsibility for a product produced or a

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service performed by the person or the person's agent; and
(B) retains and exercises primary direction and control over the work performed by an individual whose services are supplied under the independent contractor arrangement.

(3) The provision of temporary help services.

Sec. 14. "Professional employer services" means the services that are provided to a client by a professional employer organization under a professional employer agreement.

Sec. 15. "Temporary help service" means a service consisting of a person that:

- (1) recruits and hires the person's own employees, not including an officer, a manager, or a controlling person of a client to which the person's own employee is assigned by the person;
- (2) identifies organizations that need the services of employees described in subdivision (1);
- (3) assigns employees described in subdivision (1) to:
 - (A) perform work or services for organizations described in subdivision (2);
 - (B) support or supplement the workforces of organizations described in subdivision (2); or
 - (C) provide assistance in special work situations, including employee absences, skill shortages, seasonal workloads, and special assignments or projects; and
- (4) customarily attempts to reassign the employees described in subdivision (1) to other organizations when an assignment described in subdivision (3) is completed.

Chapter 3. Effect on Rights, Duties, and Obligations

Sec. 1. This article and a professional employer agreement do not affect, modify, or amend:

- (1) a collective bargaining agreement; or
- (2) rights or obligations of a client, PEO, or covered employee under:
 - (A) the federal National Labor Relations Act (29 U.S.C. 151 et seq.);
 - (B) the federal Railway Labor Act (45 U.S.C. 151 et seq.); or
 - (C) IC 22-7.

Sec. 2. This article and a professional employer agreement do not do the following:

- (1) Diminish, abolish, or remove the obligations of a client to

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a covered employee that exist before the effective date of the professional employer agreement.

(2) Affect, modify, or amend a contractual relationship or restrictive covenant:

(A) between a covered employee and a client that is in effect on the effective date of the professional employer agreement; or

(B) that is entered into between a client and a covered employee after the effective date of the professional employer agreement.

A PEO is not responsible or liable for a dispute in connection with or arising out of a contractual relationship or restrictive covenant described in this subdivision unless the PEO has otherwise specifically agreed in writing.

(3) Create a new or additional enforceable right of a covered employee against a PEO that is not specifically provided by the professional employer agreement or this article.

Sec. 3. (a) This article and a professional employer agreement do not affect, modify, or amend a federal, state, or local:

- (1) license;
- (2) registration; or
- (3) certification;

requirement that applies to a client or covered employee.

(b) The following apply to a federal, state, or local requirement described in subsection (a):

(1) A covered employee who is required to be licensed, registered, or certified is considered solely an employee of the client for purposes of a license, registration, or certification requirement.

(2) A PEO is not considered to engage in an occupation, a trade, a profession, or another activity that is:

(A) subject to a license, registration, or certification requirement; or

(B) otherwise regulated by a governmental entity; solely because the PEO has entered into and maintained a co-employment relationship with a covered employee who is subject to a requirement or regulation described in clause (A) or (B).

(3) A client has the sole right of direction and control of the professional or licensed activities of a covered employee and of the client's business.

(4) Only a:

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(A) covered employee; or

(B) client;

that is subject to a requirement or regulation described in subdivision (2)(A) or (2)(B) is subject to the regulation by a regulatory or governmental entity responsible for licensing, registration, certification, or other regulation of the covered employee or client.

Sec. 4. (a) For purposes of the determination of tax credits and other economic incentives:

(1) provided by the state or another governmental entity; and

(2) based on employment;

a covered employee is considered an employee solely of the client.

(b) A client is entitled to the benefit of any tax credit, economic incentive, or other benefit arising as the result of the employment of a covered employee of the client.

(c) If the grant or amount of an incentive is based on the number of employees a client employs:

(1) each client must be treated as employing only the covered employees actually working in the client's business operations; and

(2) covered employees working for other clients of the PEO must not be counted.

(d) A PEO shall provide, upon request by a client or an agency or a department of the state or of another governmental entity, employment information:

(1) reasonably required by an agency or a department of the state or of another governmental entity that is responsible for administration of a tax credit or economic incentive described in this section; and

(2) necessary;

to support a request, a claim, an application, or another action by a client seeking a tax credit or an economic incentive.

Sec. 5. With respect to a bid, a contract, a purchase order, or an agreement entered into with the state or a political subdivision of the state, a client's status or certification as a:

(1) small, minority owned, disadvantaged, or woman owned business enterprise; or

(2) historically underutilized business;

is not affected because the client has entered into the professional employment agreement.

Chapter 4. Registration

Sec. 1. (a) A person shall not:

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- (1) provide professional employer services;
- (2) advertise that the person:
 - (A) is a professional employer organization; or
 - (B) provides professional employer services; or
- (3) otherwise hold the person out as a professional employer organization;

in Indiana unless the person is registered under this article.

(b) The registration requirement specified in subsection (a) applies to a person that performs any of the activities specified in subsection (a) regardless of the person's use of any of the following terms:

- (1) Professional employer organization.
- (2) PEO.
- (3) Staff leasing company.
- (4) Registered staff leasing company.
- (5) Employee leasing company.
- (6) Administrative employer.
- (7) Any other name.

Sec. 2. An applicant for registration under this article shall file with the department the following information:

- (1) The name or names under which the applicant conducts business.
- (2) The address of the principal place of business of the applicant and the address of each office the applicant maintains in Indiana.
- (3) The applicant's taxpayer or employer identification number.
- (4) A list by jurisdiction of each name under which the applicant has operated in the preceding five (5) years, including any alternative names, names of predecessors, and, if known, successor business entities.
- (5) A statement of ownership that includes the name and evidence of the business experience of any person that, individually or acting in concert with one (1) or more other persons, owns or controls, directly or indirectly, twenty-five percent (25%) or more of the equity interests of the applicant.
- (6) A statement of management that includes the name and evidence of the business experience of any individual who serves as president, chief executive officer, or otherwise has the authority to act as senior executive officer of the applicant.
- (7) A financial statement:

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- (A) setting forth the financial condition of the applicant as of a date not earlier than one hundred eighty (180) days before the date the financial statement is submitted to the department;
- (B) prepared in accordance with generally accepted accounting principles; and
- (C) reviewed by an independent certified public accountant licensed to practice in the jurisdiction in which the accountant is located.

Sec. 3. (a) A PEO that is operating in Indiana on January 1, 2006, shall complete the PEO's initial registration not later than July 1, 2006.

(b) An initial registration under subsection (a) is valid until the end of the PEO's first fiscal year end that occurs after December 31, 2006.

(c) A PEO that is not operating in Indiana on December 31, 2005, shall complete the PEO's initial registration before commencement of operations in Indiana.

Sec. 4. A PEO shall, not more than one hundred eighty (180) days after the end of the PEO's fiscal year, renew the PEO's registration by filing a statement notifying the department of any changes in the information provided in the PEO's most recent registration or renewal.

Sec. 5. A PEO group may satisfy the reporting and financial requirements of this chapter on a combined or consolidated basis if each member of the PEO group guarantees the obligations under this article of each other member of the PEO group.

Sec. 6. (a) A PEO that is not domiciled in Indiana is eligible for a limited registration under this article if the PEO:

- (1) submits a properly executed request for limited registration on a form prescribed by the department;
- (2) is licensed or registered as a professional employer organization in another state that has licensure or registration requirements that are:
 - (A) substantially the same as; or
 - (B) more restrictive than;
 the requirements of this article;
- (3) does not:
 - (A) maintain an office; or
 - (B) directly solicit clients located or domiciled; in Indiana; and
- (4) does not have more than fifty (50) covered employees who

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are employed or domiciled in Indiana on any day.

(b) A limited registration is valid for one (1) year and may be renewed.

(c) A PEO that seeks limited registration under this section shall provide to the department information and documentation necessary to show that the PEO qualifies for a limited registration.

(d) IC 27-16-6-1(a)(1) does not apply to a PEO that applies for limited registration under this section.

Sec. 7. The department shall adopt rules under IC 4-22-2 to provide for registration of a PEO without compliance with this chapter and IC 27-16-6 by the commissioner's acceptance of an affidavit or a certification:

(1) provided by a bonded, independent, and qualified assurance organization that has been approved by the commissioner; and

(2) that certifies the qualifications of a professional employer organization.

Sec. 8. The department shall maintain a list of PEOs that are registered under this article.

Sec. 9. The department may prescribe forms necessary to promote the efficient administration of this chapter.

Sec. 10. All records, reports, and other information obtained from a PEO under this chapter, except to the extent necessary for the proper administration of this chapter by the department, are confidential.

Chapter 5. Fees

Sec. 1. Upon filing an initial registration application under IC 27-16-4-2, a PEO shall pay an initial registration fee not to exceed five hundred dollars (\$500).

Sec. 2. Upon the filing of an annual renewal of a registration under IC 27-16-4-4, a PEO shall pay a renewal fee not to exceed two hundred fifty dollars (\$250).

Sec. 3. Upon initial application for limited registration under IC 27-16-4-6 and upon each annual renewal of the limited registration, a PEO shall pay a fee not to exceed two hundred fifty dollars (\$250).

Sec. 4. The department shall adopt rules under IC 4-22-2 to specify any fee to be charged for a PEO group registration.

Sec. 5. A PEO seeking registration under IC 27-16-4-7 shall pay an initial and annual fee not to exceed two hundred fifty dollars (\$250).

Sec. 6. (a) The department shall adopt rules under IC 4-22-2 to

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specify any other fee to be charged under this article.

(b) A fee:

- (1) for which the amount is not specified in; and
- (2) that is charged under;

this article must not exceed the amount reasonably necessary for the administration of this article.

Sec. 7. Fees collected under this chapter shall be deposited in the department of insurance fund established by IC 27-1-3-28.

Chapter 6. Financial Requirements

Sec. 1. (a) A PEO shall maintain either:

- (1) subject to section 2 of this chapter, a minimum net worth of fifty thousand dollars (\$50,000); or
- (2) subject to subsection (b), a bond with a market value of at least fifty thousand dollars (\$50,000).

(b) A bond described in subsection (a)(2) must be held by a depository designated by the department, securing payment by the PEO of all taxes, wages, benefits, or other entitlement due to or with respect to covered employees in the event that the PEO does not make the payments when due.

Sec. 2. A bond described in section 1(a)(2) of this chapter must not be included in the calculation of the minimum net worth described in section 1(a)(1) of this chapter.

Chapter 7. General Requirements and Provisions

Sec. 1. Except as provided in a professional employer agreement, the following apply to a co-employment relationship:

(1) The client:

- (A) may exercise and enforce all rights; and
- (B) is obligated to perform all duties and responsibilities; that otherwise apply to an employer in an employment relationship, that are allocated to the client by the professional employer agreement and this article, and that are not specifically allocated to the PEO by the professional employer agreement and this article.

(2) The PEO:

- (A) may exercise and enforce only the rights; and
- (B) is obligated to perform only the duties and responsibilities;

that are required of the PEO or specifically allocated to the PEO by this article and the professional employer agreement.

(3) Unless otherwise expressly agreed by the PEO and the client in the professional employer agreement, the client retains the exclusive right to direct and control the covered

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employees as necessary to:

- (A) conduct the client's business;
- (B) discharge the client's fiduciary responsibilities; or
- (C) comply with licensure requirements that apply to the client or the covered employees.

Sec. 2. (a) Except as provided in this article, the co-employment relationship between a client and a PEO, and between a co-employer and a covered employee, is governed by the professional employer agreement.

(b) A professional employer agreement must specify the following:

- (1) The allocation of rights, duties, and responsibilities described in section 1 of this chapter.
- (2) Except as provided in subsection (c), that the PEO is responsible for:
 - (A) payment of wages to covered employees;
 - (B) withholding, collection, reporting, and remittance of payroll related and unemployment taxes; and
 - (C) to the extent the PEO has assumed responsibility in the professional employer agreement, making payments for employee benefits for covered employees.
- (3) The allocation, to either the client or the PEO, of the responsibility to obtain worker's compensation coverage for covered employees from a worker's compensation insurer that is authorized under this title to conduct the business of insurance in Indiana.
- (4) If the professional employer agreement allocates the responsibility under subdivision (3) to the PEO, a requirement that the PEO maintain and provide to the client, at the client's request at the termination of the professional employer agreement, records regarding loss experience related to the worker's compensation insurance coverage.

(c) A PEO is not responsible for an obligation between a client and a covered employee for payments in addition to the covered employee's salary, draw, or regular rate of pay, including bonuses, commissions, severance pay, deferred compensation, profit sharing, or vacation, sick, or other paid time off, unless the PEO has expressly agreed to assume liability for the payments in the professional employer agreement.

Sec. 3. A PEO shall provide written notice to each covered employee who is affected by a professional employer agreement entered into by the PEO concerning the general nature of the

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co-employment relationship between and among the PEO, the client, and the covered employee.

Sec. 4. (a) Except as expressly provided by the professional employer agreement:

(1) a client:

(A) is solely responsible for:

- (i) the quality, adequacy, or safety of goods or services produced or sold in the client's business;**
- (ii) directing, supervising, training, and controlling the work of a covered employee with respect to the business activities of the client; and**
- (iii) the acts, errors, or omissions of a covered employee with respect to activities described in item (ii); and**

(B) is not liable for the acts, errors, or omissions of:

- (i) the PEO; or**
- (ii) a covered employee of the client and a PEO when the covered employee is acting under the express direction and control of the PEO.**

(2) A PEO is not liable for the acts, errors, or omissions of a client or a covered employee of the client when the covered employee is acting under the express direction and control of the client.

(3) A covered employee is not, solely as the result of being a covered employee of a PEO, an employee of the PEO for purposes of:

- (A) general liability insurance;**
- (B) fidelity bonds;**
- (C) surety bonds;**
- (D) employer's liability that is not covered by worker's compensation; or**
- (E) liquor liability insurance;**

carried by the PEO unless the covered employee is specified as an employee of the PEO by specific reference in the professional employer agreement and any applicable prearranged employment contract, insurance contract, or bond.

(b) This section does not limit:

- (1) a contractual liability or obligation specified in a professional employer agreement; or**
- (2) the liabilities and obligations of a PEO or client as specified in this article.**

Sec. 5. A PEO that offers, markets, sells, administers, or

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provides professional employer services under a professional employer agreement as provided in this article is not:

- (1) engaged in the business of insurance; or
- (2) acting as an administrator (as defined in IC 27-1-25-1).

Sec. 6. (a) A business license fee or another fee that is based upon gross receipts must, in the case of a PEO, be based upon the administrative fee of the PEO.

(b) A tax assessed on a per capita or per employee basis must be assessed against a:

- (1) client for covered employees; and
- (2) PEO for the PEO's employees who are not covered employees.

(c) In the case of tax imposed or calculated upon the basis of total payroll, a PEO is eligible to apply a small business allowance or exemption available to the client for covered employees for the purpose of computing the tax.

Chapter 8. Benefit Plans

Sec. 1. A client and a PEO are each considered to be an employer for purposes of sponsoring retirement and welfare benefit plans for covered employees.

Sec. 2. A fully insured welfare benefit plan offered to covered employees of a single PEO is:

- (1) considered to be a single employer welfare benefit plan; and
- (2) not a multiple employer welfare arrangement (as defined in IC 27-1-34-1(b)) and is not required to comply with IC 27-1-34.

Sec. 3. For purposes of IC 27-8-15, all covered employees of a PEO participating in a group health benefit plan sponsored by the PEO are considered to be:

- (1) employees of the PEO; and
- (2) participating in a single employer plan.

Sec. 4. If a PEO offers to the PEO's covered employees a health benefit plan that is not fully insured by an insurer authorized under this title to conduct the business of insurance in Indiana, the health benefit plan must:

- (1) be administered by an administrator licensed under IC 27-1-25;
- (2) hold all plan assets, including participant contributions, in a trust account;
- (3) provide sound reserves for the health benefit plan as determined using generally accepted actuarial standards as

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set forth in an actuarial opinion filed with the commissioner and prepared and signed by a qualified actuary who:

- (A) is a member in good standing of the American Academy of Actuaries; and
- (B) meets the requirements established by the commissioner in rules adopted under IC 4-22-2;
- (4) annually submit current audited financial statements to the commissioner;
- (5) at the discretion of the commissioner, possess a written commitment, binder, or policy for stop-loss insurance:
 - (A) issued by an insurer authorized to conduct the business of insurance in Indiana; and
 - (B) that meets any specific and total coverage requirements established by the commissioner in rules adopted under IC 4-22-2;
- (6) be subject to audit for compliance with the requirements of this section by the department on a random basis or upon a finding of reasonable need; and
- (7) provide written notice to each covered employee participating in the health benefit plan that the health benefit plan is:
 - (A) self-insured or not fully insured; and
 - (B) subject to the federal Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.).

Chapter 9. Worker's Compensation

Sec. 1. Subject to the specification required under IC 27-16-7-2(b)(3), a client and a PEO are both considered the employer of a covered employee for purposes of coverage under IC 22-3-2 through IC 22-3-7.

Sec. 2. The protection of the exclusive remedy provisions of IC 22-3-2-6 and IC 22-3-7-6 apply to the PEO, the client, and each covered employee and other employee of the client regardless of whether the PEO or the client is responsible to obtain the worker's compensation coverage for the covered employees under the professional employer agreement.

Chapter 10. Unemployment Compensation Insurance

Sec. 1. (a) For purposes of IC 22-4, a covered employee of a PEO is an employee of the PEO.

(b) A PEO is responsible for the payment of contributions, penalties, and interest on wages paid by the PEO to the PEO's covered employees during the term of the professional employer agreement.

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Sec. 2. A PEO shall report and pay all required contributions to the unemployment compensation fund as required by IC 22-4-10 using the state employer account number and the contribution rate of the PEO.

Sec. 3. Upon the:

- (1) termination of a professional employer agreement; or**
- (2) failure by a PEO to submit reports or make tax payments as required under this article;**

the client must be treated by the department of workforce development as a new employer without a previous experience record unless the client is otherwise eligible for an experience rating.

SECTION 8. IC 30-4-5.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

Chapter 5.5. Enforcement Powers of the Attorney General

Sec. 1. (a) This section applies if a trustee of a benevolent trust does any of the following:

- (1) Commits a breach of trust.**
- (2) Violates the mandate of a charitable trust.**
- (3) Violates a duty listed in this article.**

(b) The attorney general may petition a court to issue one (1) or more of the following remedies for an action enumerated in subsection (a):

- (1) Injunctive relief.**
- (2) Appointment of temporary or permanent receivers.**
- (3) Permanent removal of trustees.**
- (4) Appointment of permanent replacement trustees subject to court approval.**

A remedy under this subsection is in addition to any other remedy.

(c) The attorney general may seek a remedy listed in subsection (b) against a trustee or a trust.

SECTION 9. IC 30-4-6-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) Venue in a proceeding brought by the attorney general against a trustee or a trust lies in Marion County, unless a court determines that venue in Marion County would be a hardship for a trustee or a trust.

(a) (b) Unless the terms of the trust provide otherwise, venue in this state in a proceeding brought by a party other than the attorney general for matters arising under this article shall be exclusively in the county in which the principal place of administration of the trust is located. The principal place of administration of a trust is that usual

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place at which the records pertaining to the trust are kept or, if there is no such place, the trustee's residence. If there are cotrustees, the principal place of administration is either that of the corporate trustee, if there is only one (1); that of the individual trustee who has custody of the records, if there is but one (1) such person and there is no corporate cotrustee; or, if neither of these alternatives apply, that of any of the cotrustees.

~~(b)~~ (c) If the principal place of administration is maintained in another state, venue in this state for any matters arising under this article shall be in the county stipulated in writing by the parties to the trust or, if there is no such stipulation, in the county where the trust property, or the evidence of the trust property, which is the subject of the action is either situated or generally located.

~~(c)~~ (d) Any party to an action or proceeding shall be entitled to a change of venue or change of judge as provided in the Indiana Rules of Procedure. A change of venue in any action shall not be construed to authorize a permanent change of venue for all matters arising under this article, and, upon conclusion of the action, venue shall return to the court where the action was initiated.

SECTION 10. IC 34-30-2-119.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 119.7. IC 27-16-3-2(2) (Concerning a dispute involving a professional employer organization).**

SECTION 11. [EFFECTIVE JULY 1, 2005] (a) **Notwithstanding IC 27-16-4-7, as added by this act, the department of insurance shall carry out the duties imposed upon it under IC 27-16-4-7 under interim written guidelines approved by the insurance commissioner.**

(b) **This SECTION expires on the earlier of the following:**

(1) **The date rules are adopted under IC 27-16-4-7.**

(2) **December 31, 2006.**

SECTION 12. [EFFECTIVE JULY 1, 2005] (a) **Notwithstanding IC 27-16-5-4, as added by this act, the department of insurance shall carry out the duties imposed upon it under IC 27-16-5-4 under interim written guidelines approved by the insurance commissioner.**

(b) **This SECTION expires on the earlier of the following:**

(1) **The date rules are adopted under IC 27-16-5-4.**

(2) **December 31, 2006.**

SECTION 13. [EFFECTIVE JULY 1, 2005] (a) **Notwithstanding IC 27-16-5-6, as added by this act, the department of insurance**

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shall carry out the duties imposed upon it under IC 27-16-5-6 under interim written guidelines approved by the insurance commissioner.

(b) This SECTION expires on the earlier of the following:

- (1) The date rules are adopted under IC 27-16-5-6.
- (2) December 31, 2006.

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Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Approved: _____

Governor of the State of Indiana

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